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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD PANEL
Before Administrative Judges:
Michael M. Gibson, Chairman
Dr. Richard F. Cole
Mr. Brian K. Hajek

In the Matter of CROW BUTTE RESOURCES, INC. (License Renewal In Situ Leach Facility, Crawford, NE)	Docket No. 40-8943 ASLBP No. 08-867-02-OLA-BD01 February 20, 2009

**INTERVENORS' REPLY TO RESPONSE OF APPLICANT RE:
MISC. CONTENTION K – FOREIGN OWNERSHIP**

Pursuant to LBP-08-24, as amended by the Board's December 9, 2008 Order, as described in Paragraph C at page 3 of the Board's Initial Scheduling Order dated January 8, 2009, Intervenors (formerly Consolidated Petitioners in this matter) hereby submit this Reply to Response of Applicant concerning Misc. Contention K.

INTRODUCTION

In LBP-08-24, the Board admitted Petitioners' Miscellaneous Contention K as it pertains to foreign ownership: lack of authority of the NRC to issue a source materials license to a US corporation which is 100% owned, controlled and dominated by foreign interests.[1] The Board found the need to make two legal determinations: (1) whether there is an absolute prohibition on foreign ownership under the Atomic Energy Act of 1954, as amended (the "AEA"); and (2) if there is no absolute prohibition, whether the issuance or renewal of a source materials license to a foreign-owned company would be inimical to the US national interest, the common defense and security ("CD&S"), or the

[1] LBP-08-24 at 70-75.

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health and safety of the public ("PH&S").[2]

Applicant mistakenly assumes that Intervenors have the burden at this stage of the proceeding.[3] The "ultimate burden of persuasion rests with Applicant, who seeks a licensing order"[4] to make a sufficient showing that the NRC is authorized to issue a source material license to a foreign-owned company and that the issuance of the renewal of SUA-1534 is in furtherance of the US national interest, not inimical to CD&S and not inimical to PH&S.[5] Applicant is unable to meet its burden because there is no section of the AEA that authorizes the issuance of licenses to foreign persons and for the reasons set forth in Intervenors (Petitioners) Brief re: Contention K, its Response to Applicant and NRC Staff, Reply to NRC Staff, and this Reply.

Applicant argues that there is no prohibition in the AEA and therefore, it must be allowed. Such argument is syllogistic and dangerous in light of the nuclear threats. The only reasonable construction of the AEA is that if there is no express authority to grant a license, such authority may not be implied. The generalized denials of the Applicant do not help it meet its burden. In any case, Applicant fails to point to any authority in the AEA for issuing a source materials license to a foreign-owned and controlled entity.

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[2] Id. at 71, 73.

[3] Applicant Response at 2 ("Petitioners further fail to demonstrate that the foreign ownership of the Applicant could have an impact on or endanger the common defense or security.")

[4] Neither Applicant nor NRC Staff have disputed that Applicant bears the burden of persuasion.

[5] Florida Power & Light Co. (St. Lucie Plant, Unit No. 2), 14 NRC 1167, LBP-81-58 (1981); 1981 NRC Lexis 13, 17. See also Siegel v. Atomic Energy Commission, 400 F.2d 778, 784 (DC Cir. 1968) ("applicant for a license should bear the burden of proving the security.")

REPLY

A. Scope of Proceeding; Information Supporting Contention, Specific References to LRA; Merits Phase. Of course, Applicant would prefer that foreign ownership issues be outside the scope of this proceeding.[6] Further, Applicant's arguments concerning supporting information and specificity of references to the LRA may be relevant to admissibility but are not relevant at this merits phase of the proceeding.[7] Yet, Applicant continues to assert contention admissibility arguments.[8] The Petition, prior pleadings, LBP-08-24, and the Board's December 9, 2008 and January 9, 2009 Orders speak for themselves as to the admissibility of the contention and refer to specific references to the LRA; and, most importantly, are clear that this is the merits phase on Misc. Contention K. Applicant has a burden and has failed to meet it.

In addition, contrary to Applicant's assertions that the LRA does not involve any critical infrastructure, export, or national security issues, the LRA expressly relates to a very large ISL uranium mine which produces U308 dried Yellowcake as part of Canadian company Cameco's integrated nuclear fuel business. The uranium mine itself is a part of "critical infrastructure" because of its dominance in the US domestic uranium market (with almost 1,000,000 pounds of U308 per year, the Crow Butte operation appears to represent the second largest US uranium operation behind Smith Ranch-Highland (owned

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[6] Applicant Response at 2.

[7] We are beyond contention admissibility challenges; see LBP-08-24 at 83, ¶E ("briefing on the merits with respect to...Misc. Contention K as so admitted.").

[8] Applicant Response at 9-10 ("Petitioners have not provided any information to support their claims or contested the specific governance structure reflected in the license application"); and at 12 ("Petitioners' complaints are generic in nature and not tied to any specific aspect of Crow Butte's license renewal application.")

by another Cameco subsidiary Cameco Resources formerly Power Resources, Inc.))[9] Critical infrastructure includes key energy assets such as the Crawford, NE mine.

B. No Impermissible Challenge to NRC Regulations or Regulatory Process. Contrary to Applicant's assertions, Intervenors are not attempting to bring down the NRC's entire regulatory process, nor is any part of Intervenors' arguments or contentions an 'impermissible challenge' under 10 CFR §2.335(a).[10] Applicant draws our attention to §2.335(a) and uses the 'impermissible challenge' verbage but fails to mention which regulation is purportedly being impermissibly challenged. Applicant suggests that "[b]y seeking to impose requirements beyond those set forth in the regulations, Petitioners are impermissibly challenging the Commission's regulations."[11] Clearly, the NRC regulations do not supersede the AEA, as regulations must be read consistently with the statute under which they are issued.[12] Therefore, it is entirely appropriate for Intervenors to challenge the extent to which a proposed licensing action is in conflict with any applicable NRC regulation or the AEA itself. If such was an 'impermissible challenge' this entire proceeding would be pointless. Therefore, such argumentation on the part of Applicant is extraneous and fails to assist it in meeting its burdens of persuasion.

C. Prospect of Federal Appellate Court Review; *Chevron*. Applicant and the NRC Staff each acknowledge that NRC final orders in this proceeding are subject to

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[9] To a large extent, Applicant's position that inimicality concerns are not implicated is based on an expansive reading of a footnote in dicta in Kerr McGee Corp. (West Chicago Rare Earths Facility), CLI-82-2, 15 NRC 232, 238, n.3 (1982); such position is not shared by the NRC Staff. See NRC Staff Response to Applicant's Brief re: Contention K (filed February 10, 2009) at 2, n. 4.

[10] Applicant's Response at 3.

[11] Applicant's Response at 3.

[12] A regulation "is not a reasonable statutory interpretation unless it harmonizes with the statute's 'origin and purpose.'" US v Vogel Fertilizer Co., 455 US 16, 26 (1982); see also LBP-08-24 at 71.

federal appellate court review.[13] At that time, the court will start with the clearly expressed intent of Congress in passing the 1946 Act and the 1954 Act and will evaluate such intent in the context of fostering nuclear security in a post-9/11, post-AQ Kahn World in which Iran has amassed enough enriched uranium for an atom bomb, and has pressing demand for its own uranium mining technology and equipment as well as source material uranium.[14] It would be foolhardy to believe that illicit procurement networks are not attuned to the vast profit potential involved with smuggling uranium mining technology, equipment or source material to Iran.

D. Persuasiveness of Prior Commission Decisions re: Foreign Ownership. Despite being issued prior to the events of September 11, 2001, Commission decisions concerning foreign ownership, control and domination of nuclear facilities under AEA 103d are extremely persuasive because they represent substantive legal analyses as of that point in time of nearly identical legal issues. Similarly, the NRC's SRP on Foreign Ownership, Control or Domination (1999)[15] is persuasive. Inimicality is inimicality. Things that factor into a determination of inimicality under AEA 103d or 104d (or the 1999 SRP) will also have the potential to factor into a determination of inimicality in this case based upon our facts under AEA 69 and Section 40.32(d). Intervenors have not cited any of the Commission decisions as binding precedent that must be followed by the Board. Rather, Intervenors have raised these prior decisions as influential and persuasive

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[13] Applicant Response at 3, n. 3 (reference to The Hobbs Act). The NRC Staff also acknowledges that this proceeding will be subject to federal court review. See NRC Staff Response to Intervenors (filed February 10, 2009) at 5, n.19 (expressing its view of the impact of Chevron).

[14] See, e.g., "Iran Has More Enriched Uranium Than Thought," New York Times (February 20, 2009) ("the amount of uranium that Tehran had now amassed – more than a ton – was sufficient, with added purification, to make an atom bomb.")

[15] 64 Fed. Reg. 52355 (September 28, 1999).

in assisting the Board in making a complete analysis. Intervenors respectfully suggest that if a factor militates toward a finding of inimicality in a 103d case but is found not to militate toward inimicality in this proceeding, such a finding would seem arbitrary and capricious unless there were obvious factual and legal distinctions supporting a differing finding.

E. Absence of Prohibition Does Not Mean Grant of Authority; Authority Required to Issue Licenses Rather Than Lack of Express Prohibition. Applicant believes that if the AEA does not expressly prohibit something, Applicant should be allowed to do it under the notion that "if it's not prohibited, it must be authorized."[16] There is no basis in law to support Applicant's notion. The AEA is not a law that throws open the entire field of atomic energy to unregulated, free market activities in the absence of specific prohibitions. Examples of such "open-field' laws are common where transactions are solely commercial and have no other policy considerations involved such as The Securities Act of 1933 ("1933 Act") and The Securities Exchange Act of 1934 ("1934 Act"), respectively.[17] Because such laws do not involve more than mere commercial activity, they confirm that except for transactions that require action (such as a filing or disclosure) under the 1933 Act or the 1934 Act, such transactions may go forward – i.e., if it's not prohibited or regulated, the transaction may go forward.[18] Unlike these securities laws which have a stated purpose to prohibit deceit and fraud in the sale of

[16] See, e.g., Applicant Response at 2-3 ("Petitioners' brief calls into question the Commission's authority to issue a renewed license to Crow Butte....[based on] Petitioners' concerns [that] appear to be related primarily to...NRC regulations that...do not prohibit ultimate foreign ownership of source material licensees.")
[17] 15 USC §77a et seq. and 15 USC §78a et seq.
[18] See, e.g., Section 5 of the 1933 Act requiring registration unless an applicable exemption applies.

securities to the public and, in addition to investor protection, to promote efficiency, competition and capital formation.[19]

In contrast, the AEA is based on the premise that atomic energy is such an awesome power that it must be treated specially and with more care than ordinary commercial transactions which may involve large sums but which do not have the capacity to cause as much harm as atomic energy. That is why the AEA contains Section 2012(a)-(e) providing for atomic energy to regulated in the US national interest.[20] Further, while the securities laws require the regulation of activities to protect investors and promote competition and capital formation, the AEA clearly requires the regulation of activities to protect the US national interest, CD&S and PH&S ("source material must be regulated in the national interest and in order to provide for the common defense and security and to protect the health and safety of the public.")[21] Based on the foregoing, it is clear that if an activity is one which the NRC is not authorized to regulate, it may not issue a license for such activity and such activity is prohibited without a license – therefore, such activity is prohibited (unless expressly authorized elsewhere.) Otherwise, the AEA would be emasculated and the important distinctions in policy that derive from the unique qualities of atomic energy that separates atomic energy activities from other less-dangerous commercial activities would be eviscerated. This would undermine Congress' clearly expressed intent and would be invalid under Vogel Fertilizer, and Chevron.

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[19] See Section 2(b) of 1933 Act.

[20] 42 USC §2012; in comparison, the securities laws are designed to protect a subset of the entire US population: financial investors, while the AEA is intended to protect the entire US population.

[21] Id.

F. Level of Restrictions Over Exported Uranium At Issue. Applicant takes issue with Intervenors pointing out that once Uranium is exported, it is free of the same US restrictions that would apply if the Uranium were in domestic hands.[22] Applicant then lists several kinds of legal restrictions that continue to apply after export of the Uranium.[23] Of course, no bad actors (such as illicit procurement networks) would respect any of such legal restrictions if they received possession illegally they would continue to act illegally. The "comprehensive regulatory program" referred to by Applicant[24] is based on the assumption that the involved parties are legitimate business people and not bad actors. Similarly, Applicant notes that Crow Butte is self-monitored to a large extent by self-appointed Safety and Environmental Review Panel ("SERP") to monitor compliance.[25] Needless to say, such self-monitoring gives Intervenors little comfort, especially in light of Applicant's intentional failure to disclose its foreign ownership, and in any case, well-intentioned self-monitoring neither prevents bad actors or illicit procurement networks nor constitutes a showing by Applicant sufficient to meet its burden on any element at issue in this proceeding.

G. Non-Proliferation Issues. After arguing for some time that non-proliferation issues are not relevant, Applicant in its Response addresses proliferation

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[22] Applicant Response at 5 and at 10.
[23] Applicant Response at 6.
[24] Such program consisting of US regulatory requirements to obtain DOE authorization for re-transfers of nuclear material produced from US-origin source material. While such requirements would be respected in an ideal world, we are not able to assume that bad actors in an illicit procurement network would bother seeking such DOE authorization. Accordingly, the export regulation under 10 CFR §110.6(a) cited by Applicant (Response at 6) would not constitute a effective 'comprehensive regulatory program' for purposes of determining inimicality.
[25] Applicant Response at 12.

issues (albeit with a great deal of optimism as to effectiveness thereof which is not shared by Intervenors).[26] Applicant mentions IAEA safeguards under Article III(2) of the NPT, 'adequate' physical security measures, and an agreement that no nuclear material will be used for an explosive device or to develop one.[27] Intervenors do not deny that such NPT restrictions exist; rather, Intervenors have consistently maintained that such NPT restrictions, in light of the determination and nefarious successes of bad actors and illicit procurement networks, are not a substitute for the United States and the NRC applying its own protections to ensure that proliferation does not result from civilian nuclear activities. That is why the WMD Commission Report suggests that the US not just rely on the understaffed overworked IAEA and the NPT but also require strict enforcement of the terms of the AEA (especially those pertaining to proliferation matters or over activities that could lead to proliferation).[28] The National Nuclear Security Administration ("NNSA") has also found that the IAEA is overworked and understaffed and that the NPT may not be relied on as the sole manner in which to face threats to nuclear security.[29] Accordingly, Applicant's bald assertions that these requirements "ensure that appropriate proliferation safeguards are in place"[30] does not comport with the most current nuclear security analyses by Congress, the WMD Commission, NNSA, or the IAEA and, therefore, may not be relied on to bolster anyone's confidence in nuclear security. Further, none of such assertions rise to the level of meeting Applicant's

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[26] Applicant Response at 6.
[27] Id.
[28] See WMD Commission Report at 92.
[29] See NNSA report entitled "International Safeguards: Challenges and Opportunities for the 21st Century" at http://nnsa.energy.gov/nuclear_nonproliferation/nuclear_safeguards.htm
[30] Applicant Response at 6.

burden in this case.[31]

H. Furtherance of US National Interests. Intervenors have raised serious doubts as to whether there is any meaningful benefit to the US national interest by issuing a source materials license to a foreign owned and controlled company. Applicant has countered with assertions and denials that do not bring forward any evidence that Intervenors' assertions are not true or that such doubts do not exist but such blanket denials not help Applicant meet its burden persuasion.[32] Since Applicant is required to meet its burden as to every element that supports the validity of a license renewal issuance, it is insufficient for Applicant to merely say that Intervenors are somehow 'wrong' but rather Applicant is required to make a showing of its own that issuing the license renewal is in the US national interest and is not inimical to CD&S or PH&S; and such showing must be by at least a preponderance of the evidence and should be by a showing of 'clear and convincing' evidence in order to properly respect the nuclear security concerns here.

I. Relationship of License to Export Rights. It is undisputed that a person without an effective source materials license may not use, possess or deliver source material in the United States.[33] One such 'use" while in possession of source material is to contract with a licensed export shipper to pickup Yellowcake from the facility, put it on the truck (i.e., deliver it) and ship it to an affiliate in Canada. It makes no difference

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[31] Intervenors note that while Canada's NPT credentials are laudable, they are by no means unassailable and that it was Canada's gift of a research reactor that gave India the technology used to create the plutonium it fashioned into an atomic bomb to become a nuclear power in 1974 – in one of the worst cases of nuclear proliferation the world has ever known.

[32] Applicant Response at 7-9 (calling Intervenors' points 'unfounded speculation').

[33] AEA Section 62 and 69.

that SUA-1534 does not itself authorize export if it authorizes the licensee to possess and 'use/deliver' (including the use that involves causes an export shipper to export on its behalf) the source material and if the source material could not be legally exported by a licensed exporter in the absence of a valid source materials license being held by the 'customer/supplier' of such licensed export shipper.[34] Accordingly, it is disingenuous to argue that this proceeding 'only authorizes the possession and use – not the export – of source material'[35] or that the license would not grant Applicant the 'authority' to export source material if issued, when one important 'use' of source material is to cause it to be picked up, i.e., delivered, loaded on a truck and shipped to an affiliate in Canada by a licensed export shipper such as RSB Logistics Services, Inc. under License XSOU8798.

J. Over-Compartmentalization of Issues Undermines Congressional Intent. Applicant puts great weight on its myopic view and compartmentalization of the issues to convince the Board that all these inter-connected issues are really totally separate issues that should be in a variety of separate licensing, rulemaking, enforcement and export proceedings (with the effect that none of the issues are ever properly addressed because they are 'slipped through' each separate proceeding with the substantive issues falling through the cracks).[36] Applicant specifically argues that Intervenors' concerns are properly addressed in the context of the NRC's export program and not as part of the licensing of Crow Butte despite the fact that Part 110 does not provide any meaningful public notice or opportunity to intervene as matter of right which conflicts with AEA

[34] This latter point is not disputed by NRC Staff or Applicant in their Responses.
[35] Applicant Response at 7.
[36] See, e.g., Applicant Response at 3, n. 2 ("any issue with respect to past ownership changes would be an enforcement issue, not a present licensing issue"), at 4 (concerns 'best addressed through the rulemaking process"), at 7 (concerns properly addressed in context of NRC export program), and at 9 (issues should instead by taken up with the Commission through the rulemaking process or as part of export licensing proceeding).

Section 2239(a)(1) which allows any person who may be affected to intervene. Because Part 110 allows only discretionary intervention and not intervention as of right, any interpretation by this Board that deprives Intervenors of a chance to intervene as a matter of right (as under AEA Section 2239) contradicts the AEA and must fail under Vogel Fertilizer and Chevron. Further, how can Intervenors' concerns be "properly addressed in the context of the NRC's export program" when such export program has no process for public notice, public participation or public intervention except discretionary intervention ordered by the Commission on a case by case basis if the interests of the public require.

K. Where Crow Butte Uranium Really (Not Hypothetically) Goes. Applicant argues as if the actual handling, transport and shipment of Uranium possessed and used under SUA-1534 were hypothetical – as if the operations were not ongoing and as if there were not a long track record of regular deliveries to licensed shippers and exports of uranium mined at Crawford, NE to Cameco companies in Canada.[37] Intervenors respectfully suggest that this Board is less concerned about where the source material 'might' be shipped hypothetically (described by Applicant at its Response p.8), and more concerned with where it is 'actually' being shipped (Canada). Once it is fabricated into fuel in Canada, it is exported by Cameco (Canada) as a product to customers throughout the World, including the US, presumably in accordance with Canadian export regulations.

L. Evidence of Impact of Renewal on Asserted National Interests. Intervenors have identified a variety of impacts from issuance of the license to a foreign

[37] Applicant Response at 7-8.

owned company in general and to Applicant in particular, including the fact that the ion-exchange columns used by Applicant in its mining operations are themselves restricted on the IAEA Trigger List.[38] Rather than attempting to rebut Intervenors' supported factual assertions with any showing of evidence in support of itself, Applicant simply dismisses Intervenors by saying Intervenors failed to provide ample evidence. Yet this is Applicant's burden. Intervenors have come forward with a showing and Applicant has failed to meet that showing and overwhelm it by a showing of its own choosing blanket denials instead. However, such denials are not a form of making a showing and do not assist Applicant in meeting its burden.

M. Impacts of Foreign Ownership Includes PH&S Risks From Having "No Loyalty to US." Applicant denies Intervenors' arguments that foreign owners have no loyalty to prevent the reckless, negligent or intentional contamination of the environment by ISL mining and such owners are more inclined to suppress relevant geologic data that shows probabilities of structural control and mineralization and related groundwater flows and contamination.[39] The foregoing is a logical, fact based argument that is supported by the 1989 Whistleblower Letter and Dr. LaGarry's opinion.[40]

In 1989, an expert geologist hired by Applicant to render a second opinion, opined to both Applicant and the NRC Staff that there was geologic data showing probabilities of structural control, mineralization, groundwater flows and that

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[38] See Intervenors (Petitioners') Brief re: Contention K (filed January 21, 2009) at 23-51; and Intervenors' Response re: Contention K (filed February 10, 2009) at 9-11 and 17-19.
[39] Applicant Response at 9.
[40] While the 1989 Whistleblower Letter was found by the Board to be insufficient by itself to sustain an admissible contention for nondisclosure (Misc. Contention G; LBP-08-24 at 67 ('[w]e decline to admit this contention regarding the allegations that Crow Butte suppressed geological data because Consolidated Petitioners fail to identify any specific alleged omission in the License Renewal Application itself.")

contamination was "possible, if not likely."[41] The geologist further alleged that foreign management of Applicant was reckless concerning US public health and safety, as follows:

> Mr. Stephen P. Collings of Ferret [prior name of Applicant] and Mr. Karl Kegel, President of Uranerz USA, Inc. [itself a subsidiary of a foreign company] were made aware of the liklihood [sic] of structural control by means of technical memoranda written in July 1988....Mr. Kegel and Mr. Collings [and another Uranerz representative]...have apparently agreed to surpress [sic] general knowledge of the structural interpretation so that mining and exploration may proceed unimpeded....Ferret, with the approval of [foreign] Uranerz top management, has refused to undertake specifically designed drilling to investigate the significance of the structural control of mineralization. Clearly Ferret and Uranerz will choose to ignore the existence of faults and their significance in relation to ground water quality."

The 1989 Whistleblower Letter contains interpretations of geologic data that are consistent with the 1984 Opinion of David W. Thomssen and Roy W. Elliot (the "1984 Opinion") and the 2008 Dr. LaGarry Opinion. The 1984 Opinion states that "faults are known to occur in the region in connection with springs. Thus fault fractures play an important role in the flow system....it is possible that the disruption of groundwater flow by faulting caused the uranium ore to be deposited in the first place."[42] The LaGarry Opinion states "I am concerned that unmapped and unmonitored faults may be transmitting lixiviant and waste water through confining layers and into the White River, the alluvium within the White River, and into the secondary porosity of the Brule Formation."[43] The 1989 Whistleblower Letter states[44]:

The amount of information that is now available in the general Crow Butte

[41] Petition at 68.
[42] Petition at 66-67.
[43] LaGarry Opinion at 1.
[44] Petition at 67-68.

> area is great enough to minimize the uncertainty of geologic interpretation to the point that certain probabilities (not possibilities) may be stated.

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> [A]s a matter of my professional opinion I find it to be highly probable that most, if not all, uranium mineralization in the Crow Butte area is directly and primarily controlled by near-vertical faults cutting through the area.

If the 1984 Opinion and the 1989 Whistleblower Letter opinion are correct, as is borne out by Dr. LaGarry's 2008 opinion, such creates an inference (not rebutted to date) that Applicant and its management (including managers appointed by foreign interests) have turned a blind eye to serious risks of faulting, fracturing and potential for contamination.[45] Dr. LaGarry specifies that the main geological interpretation in 1989 Whistleblower Letter is:

> that the uranium mined by CBR occurs within the faults themselves, and is not a roll-front deposit as CBR maintains. This would be the worst possible situation. If there are minerals within faults, they are there because flowing water brought them there and deposited them there. If there are minerals along the faults and CBR is mining them, then they (CBR) are progressively "uncorking" the flow pathways along these faults. If this is the true situation, the risk of spilling contaminants into these faults increases with additional mining, and contamination by chemically altered waters is a virtual certainty. Also, mining the Chamberlain Pass Formation could cause these faults to move again. This could create new, unforeseen pathways for contaminants spread through.

Thus, Applicant is off-base when it says that Intervenors bring forward 'nothing more than unfounded speculation.'[46] The foregoing demonstrates that Intervenors have made a showing of specific incidences of possible suppression of and at least 'turning a blind eye' to relevant geologic interpretations tending to show that their mining operations

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[45] See LaGarry Opinion at 2-4 (faults and fractures transect all major bedrock units involved; formation generally impermeable except where fractured; where fractured, transmits water; secondary porosity in the Brule; the influence of secondary porosity and artesian pressures; and contaminant pathways, among other things).

[46] Applicant Response at 9.

negatively impact public health and safety and that the involvement of foreign interests (with reference here to the prior involvement of Uranerz that preceded Cameco's 1998 stock purchase) exacerbates this, as described in the 1989 Whitstleblower Letter. Actually, it is Applicant that brings forward nothing more than unfounded speculation which fails to meet its burden of persuasion.

N. More Than Generalized, Unsupported Assertions When Management Meetings and Decisions and Cameco Assets Are Outside the US. There is no dispute that if Applicant's US employees are being deceived by foreign interests, such US persons would be subject to NRC jurisdiction under Section 40.2 and would be subject to appropriate enforcement actions. In other words, they would be really good US scapegoats for foreign bad actors that might secretly acquire controlling interests under the Cameco Loophole. Applicant fails to see the problem when management decisions concerning US nuclear materials are made outside the United States by persons who are outside US jurisdiction. Intervenors agree that forging regulatory documents is a serious offense,[47] but not to someone who is already a nuclear smuggler or committed to *Jihad.* What would such persons care about civil or criminal enforcement.

That is one side of the spectrum; at the other end is when management decisions are made by persons inside the US and subject to NRC regulations, as the LRA would have the public and the NRC Staff believe is the case with Applicant by omitting disclosure of Cameco's foreign ownership of Applicant. In the middle of the spectrum, but no less inimical to CD&S and PH&S, is where, as here, foreign decisionmakers outside of US jurisdiction make decisions putting the profits first, the benefit of their

[47] Applicant Response at 10.

people before the safety of the people in the communities in the US in which the mining operations occur. This is because there is no enforcement (civil, criminal or investigative) against foreign decision-makers without the full and complete cooperation of foreign governments (and due to political changes, last year's enemy may be today's ally and vice-versa).

And even if the foreign government at issue is an ally, like Canada, there are still disagreements between the US and Canada (e.g., trade issues; NAFTA) that could cause the US to have to give something up to Canada in order to induce Canada to force Cameco executives to answer NRC subpoenas or for Cameco to be liable for US liabilities exceeding the value of its US assets (i.e., pierce the corporate veil through subsidiaries from Applicant, the holding companies, to Cameco's assets). Accordingly, without a full and complete inimicality analysis, Section 40.32(d) would not be satisfied. Any such analysis would have to conclude that allowing foreign persons located outside the US to make management decisions that are material to the safe operation of the mine by Applicant and remain outside of US jurisdiction is inimical.

Further, allowing Applicant to be operated with minimal assets (e.g., sending all Yellowcake to affiliates without consideration; upstreaming any profits; leaving only nominal operating assets within Applicant itself) means that if the surety bond/financial assurances in the Letter of Credit issued by Royal Bank of Canada to support SUA-1534 were insufficient to pay for decommissioning and water restoration, Cameco would have left Applicant with insufficient assets to satisfy the excess. With the rest of Cameco's assets outside of US jurisdiction, there would be no way to enforce Applicant's

decommissioning and water restoration obligations against Cameco's assets. If the Yellowcake and profits had been kept in the US, the assets would have been available to satisfy any excess of the decommissioning restoration costs.

O. Section 40.46 Transfer Based On Less Than 'Full Information'; 1998 Approval Not Binding. Intervenors agree with Applicant that any transfer of control that did not comply with Section 40.46 (including the acquisition of "full information") would be contrary to NRC regulations and could result in enforcement actions.[48] In addition, if Applicant was complicit in the reason why NRC Staff did not acquire 'full information', it would be subject to an enforcement action. It would also have 'unclean hands' and could not be rewarded for its own concealment.

The 1998 transfer occurred after Cameco had already acquired just under 1/3 of Applicant's common stock in its 1995/1996 purchase of Geomex. Why didn't Cameco disclose the 1995/1996 purchase of just under 1/3 of the common stock? Such a large shareholding carries with it substantial shareholder rights that were under foreign control.

When Mr. Collings sent his May 13, 1998 letter notifying the NRC Staff of the proposed stock sale, he made certain representations that were accepted 'uncritically' by the NRC Staff which issued its approval based on such representations. Such representations do not constitute 'full information' that NRC Staff is required to obtain under Section 40.46. There was no inimicality analysis done in 1998. The May 13, 1998 letter does not state the impacts of foreign ownership of 90% of Applicant's stock (or that prior to the purchase of Uranerz, Cameco had acquired Geomex' 32%), the identity of Cameco executives based in Canada having authority over the management of Applicant

[48] Applicant Response at 11.

or the extent to which records related to the mine or Applicant would be kept outside the United States, whether decisions related to Applicant would be made outside the United States and whether the United States regulators would have jurisdiction over persons, records and assets located outside the United States.[49] Because the 1998 disclosure failed to provide 'full information' to the NRC Staff, and Applicant has failed to make a showing to the contrary, the 1998 approval is not dispositive, binding or even relevant to this proceeding.

CONCLUSION

As noted by the Board in LBP-08-24, this issue is 'fatal' to Applicant's license renewal. Accordingly, the license renewal must be denied.

Dated this *20th* day of February, 2009.

Respectfully submitted,

/s/ - electronically signed

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[49] Similarly, no disclosure was made concerning the dividend policy and how Applicant would keep its assets from flowing outside the US so that only nominal assets would be available to satisfy any under-collateralized clean-up costs.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD PANEL
Before Administrative Judges:
Michael M. Gibson, Chairman
Dr. Richard F. Cole
Mr. Brian K. Hajek

In the Matter of CROW BUTTE RESOURCES, INC. (License Renewal In Situ Leach Facility, Crawford, NE)	Docket No. 40-8943 ASLBP No. 08-867-02-OLA-BD01 February 20, 2009

CERTIFICATE OF SERVICE

I hereby certify that copies "INTERVENORS' REPLY TO RESPONSE OF APPLICANT RE: MISCELLANEOUS CONTENTION K" in the above captioned proceeding has been served on the following persons by electronic mail as indicated by a double asterisk (**); on this 20th day of February, 2009:

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RAS-X-117

Hearing Docket

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Subject: Transmitting Document - Docket No. 40-8943 - ASLBP No. 08-867-02-OLA-BD01
Attachments: Intervenors Reply to Applicant Response re Contention K 02202009.pdf; (Renewal) EIE conformed COS Misc Cont K 02202009.pdf; Intervenors Reply to NRC Staff Response re Contention K 02202009.pdf; (Renewal) EIE conformed COS Misc Cont K NRC 02202009.pdf

Dear Parties and Counsels,

Attached for filing are:

Intervenors Reply to Applicant's Response re: Contention K, and related COS; and

Intervenors Reply to NRC Staff Response re: Contention K, and related COS.

Sincerely,

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Received: from mail2.nrc.gov (148.184.176.43) by OWMS01.nrc.gov
(148.184.100.43) with Microsoft SMTP Server id 8.1.291.1; Fri, 20 Feb 2009
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Fri, 20 Feb 2009 20:05:33 -0800 (PST)
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08-867-02-OLA-BD01
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